UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ALEXANDRIA GUYETT,

Plaintiff,

-against-

GARTNER, INC.,

Defendant.

CIVIL ACTION NO.:

COMPLAINT

Plaintiff, ALEXANDRIA GUYETT, by her attorneys BLAU LEONARD LAW GROUP, LLC alleges of her own knowledge and conduct and upon information and belief as to all other matters, as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et. seq.* ("FLSA") in connection with GARTNER'S violation of its statutory obligations to pay Plaintiff overtime wages, as a non-exempt employee, for work in excess of 40 hours per week, at a rate of 1.5 times her regular rate of pay, pursuant to 29 U.S.C. §207 (a).

2. Plaintiff also seeks to recover monetary damages arising from GARTNER'S violation of New York Labor Law §§ 191,193, 663 and the common law of New York, in failing to pay Plaintiff earned wages/ commissions, for business she had secured prior to her termination of employment.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action involves the Fair Labor Standards Act, 29 U.S.C. § 201et seq., a Federal Statute.

4. Jurisdiction exists in this Court based on complete diversity of citizenship between the parties and because the value of the rights of the Plaintiff implicated by the conduct alleged herein and the actual and potential loss to the Plaintiff as a result of GARTNER'S unlawful conduct exceed $75,000, exclusive of interest and costs, pursuant to 28 U.S.C. § 1332.

5. As to claims under New York State law, this Court has supplemental subject matter jurisdiction pursuant to 28 U.S.C. § 1367.

6. Venue is proper in this District under 28 U.S.C. § 1391 (b) and (c) because a substantial part of the acts or omissions giving rise to this action occurred in this District and GARTNER is subject to personal jurisdiction in this District.

THE PARTIES

7. GARTNER is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Stamford, Connecticut 06902.

8. Plaintiff is an individual citizen and resident of Ridgewood, New York 11385.

FACTUAL ALLEGATIONS

9. GARTNER holds itself out as the leading global provider of research and analysis in the information technology ("IT") industry. GARTNER'S principal business segments include research, consulting, executive programs and events.

10. GARTNER operates and controls an enterprise engaged in commerce, with an annual gross volume of business exceeding $500,000.00.

11. From 03/21/2011 to 12/31/15, GARTNER employed Plaintiff as an inside sales account executive, at its offices located in Fort Meyers, Florida. From 01/01/2016 to 02/02/2017, GARTNER employed Plaintiff as an outside sales account executive, assigned to the New York office.

12. Plaintiff's primary job responsibilities as an inside sales account executive, was to liase with existing account holders to ensure customer satisfaction and to increase retention and account growth.

13. At all times material and relevant herein, GARTNER was the employer of Plaintiff and possessed the authority and power to hire or terminate Plaintiff; control Plaintiff's work schedules and conditions of employment; determined the rate and method of the payment of wages; determined overtime policy; determined plaintiff's exemption/non-exemption status; and kept and/or had unrestricted access to records regarding Plaintiff's employment.

14. At all relevant times, Plaintiff was an employee of GARTNER within the meaning of 29 U.S.C. §§201 et. seq.

15. During her employment with GARTNER, as an inside sales account executive Plaintiff worked between 60-80 hours per week.

16. Plaintiff was required by GARTNER and did regularly work an average of 70 hours per week.

17. At all relevant times, Plaintiff worked in the manner described above and GARTNER encouraged, instructed, and required her to work in this manner.

18. Plaintiff was never paid overtime compensation by GARTNER, for all hours worked each week, in excess of 40 hours.

19. For example, during the work week of August 3rd to August 7th, 2015, Plaintiff worked 70 hours and was paid approximately $ 1,795.78 (Salary & Commission). Plaintiff's regular rate of pay for that workweek was $1,795.78 ÷ 70 = $25.65hr. Her overtime rate was 1.5 times her regular rate of pay [25.65 x 1.5 = $38.47]. Plaintiff should have been paid overtime compensation of 30hrs. x 38.47 = $ 1154.10. Instead she received ZERO overtime compensation.

20. Upon information and belief, GARTNER never posted a notice explaining the minimum hourly wage and overtime pay rights provided by FLSA in any area of its business facility where Plaintiff was employed, in violation of 29 C.F.R. §516.4.

21. At all times material and relevant herein, GARTNER failed to keep full and accurate records of Plaintiff's hours and wages, in violation of 29 C.F.R. §§ 516.5.

22. GARTNER intentionally and knowingly treated Plaintiff as exempt under § 213(a) of the FLSA, to circumvent the statute's overtime pay requirements.

23. GARTNER intentionally and knowingly misclassified Plaintiff, as an employee exempt from the overtime pay requirements of the FLSA, despite her regular performance of non-exempt duties.

24. Plaintiff did not and does not qualify as an exempt employee as defined by the applicable Federal regulations.

25. GARTNER'S wrongful acts, omissions and/or commissions, as alleged herein, were not made in good faith or in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation by the U.S. Department of Labor or any administrative practice or enforcement policy of such department.

26. GARTNER'S FLSA violations were willful, arbitrary, unreasonable and/or in bad faith.

27. GARTNER'S failure to pay Plaintiff overtime compensation, in violation of the FLSA, was willful and not the result of a good faith contest or dispute.

FIRST CLAIM FOR RELIEF
(FLSA)

28. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

29. GARTNER failed to compensate Plaintiff for all hours in a work week in excess of forty (40).

30. GARTNER failed to compensate Plaintiff at a rate of 1.5 times her regular rate of pay, for all hours in a work week in excess of 40.

31. GARTNER'S overtime practices, as described herein, violated the FLSA.

32. GARTNER'S conduct and employment practices, as described herein, was/is willful, intentional, unreasonable, arbitrary and in bad faith.

33. By reason of these unlawful acts, GARTNER has deprived Plaintiff of overtime compensation, in amounts to be determined at trial, together with such other amounts for liquidated damages, prejudgment interest, attorney's fees, costs and other compensation pursuant to 29 U.S.C. § 216(b).

SECOND CLAIM FOR RELIEF
(New York Labor Law §§ 191,193)

34. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

35. From 01/01/2016 to 02/02/2017, GARTNER employed Plaintiff as an outside sales account executive, assigned to the New York office.

36. As an outside sales account, executive Plaintiff's principal activity was not supervisory, managerial, executive or administrative nature.

37. Plaintiff's principal activity as an outside sales account executive, was to act in a field sales role responsible for both direct client contract value retention as well as growth through contract expansion and the introduction of new products and services. The territory for this role included specific major client accounts, and carried a sales quota of $1million+ of contract value.

38. GARTNER paid Plaintiff an annual base salary and a target commission earned upon attainment of performance goals.

39. The maximum target commission could not exceed 40% of Plaintiff's total target annual compensation.

40. Once a commission is earned, it is legally considered "wages" under the New York Labor Law and subject to all other provisions of the Labor Law regarding payment of wages.

41. Once earned, commissions are considered wages and deductions are limited to those permitted by Section 193 of the New York Labor Law.

42. GARTNER violated New York Labor Law §§ 191 by failing to reduce to a writing, signed by both the employer and the commission salesperson (Plaintiff), the agreed terms of employment, including payment of commissions.

43. GARTNER violated New York Labor Law §§ 191 by failing to create a writing, signed by both the employer and the commission salesperson, setting forth a description of how wages, salary, commissions and all other monies earned and payable shall be calculated.

44. GARTNER violated New York Labor Law §§ 191 by failing to create a writing, signed by both the employer and the commission salesperson, setting forth details pertinent to payment of wages, commissions and all other monies earned and payable in the case of termination of employment by either party.

45. GARTNER terminated Plaintiff's employment on February 2, 2017.

46. Effective immediately upon termination, GARTNER prohibited Plaintiff access to any of her former accounts and intentionally prevented her from performing any administrative tasks that were pre-requisites to her receiving payment of earned commissions.

47. Specifically, GARTNER prevented Plaintiff from securing written purchase orders, from clients who had previously issued purchase order numbers. GARTNER does not pay commissions unless a written purchase order is received and an invoice generated, within 30 days of the transaction.

48. In February 2017 Plaintiff requested in writing, that GARTNER furnish a statement of earnings paid or due and unpaid as of the date of termination.

49. To date, GARTNER refuses to furnish this requested information.

50. As of the time of termination, Plaintiff had earned and was entitled to payment of commissions in the approximate amount of Ninety Thousand ($90,000.00) Dollars.

51. Plaintiff has duly demanded payment of earned commissions, as of the time of termination, in the approximate amount of $90,000.00 and GARTNER has refused to compensate Plaintiff, in whole or in part, for such wages.

52. GARTNER is liable to Plaintiff for all unpaid wages/earned commissions in such amounts to be determined at trial, together with the costs of this action, including reasonable attorney's fees.

THIRD CLAIM FOR RELIEF
(New York Labor Law § 663)

53. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

54. As a result of GARTNER'S unlawful business practices, as above described, Plaintiff received wages from GARTNER in an amount less than the wages that she earned.

55. Pursuant to New York Labor Law§ 663, Plaintiff is entitled to recover the amount of any such underpayments, interest and costs, including reasonable attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and damages as follows:

(a) Judgment for unpaid overtime pay to which Plaintiff is lawfully entitled pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et. seq., and attendant regulations at 29 C.F.R. § 516 et. seq.;

(b) Judgment for liquidated damages pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et. seq., and attendant regulations at 29 C.F.R. §516 et. seq., in an amount equal to the unpaid overtime pay to which Plaintiff is entitled;

(c) Judgment for all unpaid earned commissions as of the date of termination, pursuant to New York Labor Law §§ 191,193 and New York common law principles.

(d) Judgment for all unpaid earned wages as of the date of termination, pursuant to New York Labor Law § 663;

(e) An order directing GARTNER to pay Plaintiff her reasonable attorney's fees and all costs connected with this action.

(f) Such other and further relief as this Court may deem just and proper.

Dated: April 5, 2017

BLAU, LEONARD LAW GROUP, LLC

By: [signature]

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